TENNESSEE REGULATORY AUTHORITY

Sara Kyle, Chairman Lynn Greer, Director Melvin Malone, Director



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February 5, 2002

EXECUTALL

David Waddell, Esq. **Executive Secretary** Tennessee Regulatory Autority 460 James Robertson Parkway Nashville, Tennessee 37243

Hand delivered

Re: Show Cause Proceeding Against Talk.com, Inc. Docket No. 01-00216

Dear David:

Enclosed is the Consumer Service Division's Motion to Compel in the above stated proceeding. Please accept the same for filing. If you have any questions, please do not hesitate to contact me.

With kindest regards, I am

Sincerely yours,

Cc/ Henry Walker Tim Phillips

BEFORE THE TENNESSEE REGULATORY AUTHORITY

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NASHVILLE, I ENNESSEE		103/63/5/70/4/17
IN RE:)	EXECUTIVE CONTINUES.
SHOW CAUSE PROCEEDING AGAINST TALK.COM, INC.)))	DOCKET NO. 01-00216

THE CONSUMER SERVICES DIVISION'S MOTION TO COMPEL RESPONSES TO ITS DISCOVERY REQUESTS

Pursuant to Tenn. R. Civ. P. 37.01 and Tenn. Comp. R. & Reg. 1220-1-2-.11(9) the Consumer Services Division ("CSD") of the Tennessee Regulatory Authority ("Authority" or "TRA"), by and through the undersigned counsel, hereby requests that the TRA compel Talk.com, Inc., also known as or affiliated with Access One, Access One Communications, OmniCall, Inc., The Phone Company, The Other Phone Company, AOL Long Distance, Tel-save, Talk America Holdings, Inc. and TalkAmerica® (hereinafter referred to as "Talk.com") to provide full and complete responses to the enumerated discovery requests from its Interrogatories and First Request for Production which were filed and served on Talk.com on January 22, 2002. As set forth in greater detail below, Talk.com's objections and responses were legally insufficient to allow Talk.com to evade the CSD's discovery requests. Accordingly, the CSD requests that the Authority deny Talk.com's objections and compel Talk.com to respond.

I. GENERAL RESPONSE

Talk.com's specific objections, which are all limited to relevance, contravene

Tennessee's liberal discovery rules. See Harrison v. Greeneville Ready-Mix, Inc., 220 Tenn. 293, 301-02, 417 S.W.2d 48, 51 (1967). The Tennessee Rules of Civil Procedure encourage the discovery of relevant, non-privileged information prior to trial in order to promote economy and efficiency by helping to identify and narrow the issues for trial and prevent trial by ambush by eliminating the element of surprise. See Pettus v. Hurst, 882 S.W.2d 783, 786 (Tenn. Ct. App. 1993); Wright v. United Servs. Auto. Ass'n, 789 S.W.2d 911, 915 (Tenn. Ct. App. 1990); Airline Constr., Inc. v. Barr, 807 S.W.2d 247, 263 (Tenn. Ct. App. 1990); Hood v. Roadtec, Inc., 785 S.W.2d 359, 362 (Tenn. Ct. App. 1989).

Generally, Tenn. R. Civ. P. 26 governs what is discoverable in Tennessee. Rule 26.02(1) is broad in scope, allowing parties "to obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party" Tenn. R. Civ. P. 26.02(1).²

The key phrase in this definition—"relevant to the subject matter involved in the pending action"--has been construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case. Consistently with the notice-pleading system established by the Rules, **discovery is not limited to issues raised by the pleadings**, for discovery itself is designed to help define and clarify the issues. Nor is discovery limited to the merits of the case, for a variety of fact-oriented issues may arise during litigation that are not related to the merits.

¹ Talk.com's response also included a "general objection" that did not relate to any specific discovery request, which objected to discovery requests "to the extent that they seek (1) information or materials protecting attorney-client communications and/or attorney work-product doctrine, (2) material prepared in anticipation of litigation, or (3) any information or materials subject to other [unspecified] privileges." The Pre-Hearing Officer should ignore such a general objection because it is not tied to a specific discovery request. See Duncan v. Duncan, 789 S.W.2d 557, 560 (Tenn.App.1990).

² In general, Tenn. R. Civ. P. 26 is identical to Fed. R. Civ. P. 26. See Austin v. City of Memphis, 684 S.W.2d 624, 631 (Tenn. Ct. App. 1984).

Vythoulkas v. Vanderbilt University Hospital, 693 S.W.2d 350, 359 (Tenn. Ct. App. 1985) (quoting Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351, 98 S.Ct. 2380, 2389 (1978) (internal citations omitted, emphasis added). Tennessee law construes the relevance requirement as "synonymous with 'germane or 'bearing on the subject matter." Id. Thus, "[d]iscovery can be used to obtain information which not only relates to the issues apparent from the pleadings, but to formulate additional issues which relate to the subject matter of the pleadings." Shipley v. Tennessee Farmers Mutual Ins Co., No. 01-A-01-9011-CV-00408, 1991 WL 77540 (Tenn. Ct. App. May 15, 1001) (emphasis added); see e.g. State ex rel. Leech v. Wright, 622 S.W.2d 807, 810 (Tenn. 1981).

Notwithstanding the broad definition of relevance embraced under Tennessee law, the scope of discovery is not unlimited. *See, e.g., Miller v. Doctor's General Hosp.*, 76 F.R.D. 136, 139 (W.D. Okla. 1977). Tennessee's definition of relevance includes the requirement that there must be a reasonable possibility the requested information will lead to admissible evidence. *See Steinkerchner v. Provident Life & Accident Ins. Co.*, No. 01-A- 01-9910-CH-00039, 1999 WL 734545 (Tenn. Ct. App. Sept. 22, 1999); *Hawes v. C. E. Cook & Co.*, 64 F.R.D. 22 (W.D.Mich.1974). The CSD has demonstrated below that with each of its discovery requests there is a reasonable possibility that the information sought will lead to admissible evidence.

In its responses to the CSD's discovery requests, Talk.com has made the following objection to all but two (2) of the CSD's thirty-seven (37) discovery requests:

Talk.com objects to [this Request or this Interrogatory] on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. **Specifically, [the Request or Interrogatory] is**

not reasonably connected to a specific violation(s) contained in the Show Cause Order. Talk.com respectfully requests that the CSD rephrase [this Request or Interrogatory] in reference to specific count(s) contained in the Show Cause Order.

Talk.com's contention that discovery requests must be tied to a specific count in the Order Requiring Talk.com to Appear and Show Cause Why A Cease and Desist Order and/or Fine Should Not Be Imposed (hereinafter Show Cause Order) lacks legal authority. In fact, Talk.com's contention contravenes the well-settled rule cited above holding that discovery is not limited to the issues apparent from the pleadings. Vythoulkas, 693 S.W.2d at 359. As is discussed below, each of the CSD's discovery requests seeks information that bears on, or reasonably could lead to other matters that could bear on, issues that are or may be involved in this case. See id.

In light of the above-mentioned authority and the CSD's particularized showing below that each of its discovery requests are relevant, the burden is on Talk.com, the party resisting discovery, to clarify and explain its objections and to provide support therefor. *See Roesberg v. Johns Manville*, 85 F.R.D. 292 (E.D. Pa. 1992); *Miller v. Panucci*, 141 F.R.D. 292, 311 (C.D.Cal.1992); ("parties opposing discovery are required to carry a heavy burden of showing why discovery should be denied"). Talk.com must show specifically how, despite the broad and liberal construction afforded the discovery rules, each discovery request is not relevant. *See id.* "More than a conclusory statement that the discovery is irrelevant must be offered, the opposing party must show specifically how the request is not reasonably calculated to lead to the discovery of admissible evidence." *See Teichgraeber v. Memorial Union Corp of the Emporium State Univ.*, 932 F. Supp. 1263, 1266 (D. Kan. 1996).

Talk.com can make no showing to justify its obstruction of discovery in this case. Accordingly, the CSD respectfully requests that the Pre-Hearing Officer consider the CSD's showing of relevance as to each of the discovery requests to which Talk.com refused to respond and then order Talk.com to immediately respond to each of the CSD's discovery requests.

Tenn. R. Civ. P. 37 provides sanctions for failure to make or cooperate in discovery. Rule 37.01(2) permits parties to move for an order compelling an answer when a party fails to properly respond to a discovery request. Rule 37.01(3) mandates that evasive or incomplete responses be treated as a failure to answer. Rule 37.01(4) states:

If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust....

Talk.com's objections to the CSD's discovery requests cannot be justified. They have no basis in law. Accordingly, the CSD requests the Pre-Hearing Officer to require Talk.com to pay to the CSD the reasonable expenses incurred in obtaining the order granting this Motion to Compel.³

While the CSD is not seeking Rule 11 sanctions, Talk.com's objections are sufficiently lacking in substance to raise questions as to whether counsel "has conducted a reasonable inquiry into the facts and the law, and is satisfied that the document is well-grounded in both, and is acting without any improper motive." Andrews v. Bible, 812 S.W.2d 284, 288 (Tenn.1991). ("The certification which results from the attorney's signature on a motion, pleading, or other document is directed at the three substantive prongs of Rule 11: its factual basis, its legal basis, and its legitimate purpose. A signature signifies to the Court that the signer has read the pleading, motion, or other paper, has conducted a reasonable inquiry into the facts and the law, and is satisfied that the document is well-grounded in both, and is acting without any improper motive. 'The essence of Rule 11 is that signing is no longer a meaningless act; it denotes merit. A signature sends a message to the [trial judge] that this document is to be taken seriously.' (internal citations omitted).

II. RESPONSES TO TALK.COM'S SPECIFIC OBJECTIONS

A. REQUESTS FOR PRODUCTION

1. Talk.com objects on relevance grounds⁴ to the CSD's **Request for Production**No. 1, which states:

Provide all documents reflecting the corporate structure and corporate formation as well as any reorganization or restructuring of Talk.com and any holdings or interest Talk.com has in other entities.

CSD's Response:

Talk.com is known by many names, including Access One, Access One Communications, OmniCall, Inc., The Phone Company, The Other Phone Company, AOL Long Distance, Tel-save, Talk America Holdings, Inc. and TalkAmerica®. The requested information will enable the CSD to determine whether Talk.com is doing business through the use of other corporate identities against which additional consumer complaints have been filed. Additional complaints are relevant to the reasonableness of Talk.com's business practices, a key element in this proceeding. *See* Tenn. Code Ann. §§ 65-4-125(a) and (b). Further, ascertaining the corporate names used by Talk.com will allow the CSD to determine the overall corporate make-up of the company, assist in assessing the appropriate penalty under Tenn. Code Ann. § 65-4-116, and enable the CSD

⁴ Because the objections to the CSD's discovery requests are identical, except for their reference to either a Request (for Production) or Interrogatory, the CSD will hereafter refer to the above quoted language as "Talk.com objects on relevance grounds." As required by Tenn. Comp. R. & Reg. 1220-1-2-.11(9), a copy of the discovery requests and the objections thereto are attached. As noted previously, each of Talk.com's objections state:

Talk.com objects to [this Request or this Interrogatory] on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Specifically, [the Request or Interrogatory] is not reasonably connected to a specific violation(s) contained in the Show Cause Order. Talk.com respectfully requests that the CSD rephrase [this Request or Interrogatory] in reference to specific count(s) contained in the Show Cause Order.

to obtain reseller agreements that may provide a basis for some of Talk.com's business practices. For example, Talk.com's resale agreement with BellSouth was filed under the name Omnicall.

2. Talk.com objects on relevance grounds to the CSD's Request for Production No. 2, which states:

Provide all documents, including but not limited to contracts, relating to or describing the relationship between Talk.com and (1) BellSouth; (2) any other local exchange carrier in Tennessee; and/or (3) any person or company involved in the provision of local or long distance service and /or rating and billing services and/or solicitations to Tennessee persons on behalf of Talk.com.

CSD's Response:

The requested documents will allow the CSD to determine whether there is a contractual basis for some of Talk.com's business practices, which are at issue in this proceeding. These documents will also show Talk.com's involvement, if any, in disputes with other carriers about billing, delayed cancellation orders or other matters related to the reasonableness of Talk.com's business practices.

3. Talk.com objects on relevance grounds to the CSD's Request for Production No. 3, which states:

- a) Provide all documents that explain, detail, advertise, promote and/or offer Talk.com's local, intraLATA and/or interLATA long distance service, billing and rating to Tennessee persons.
- b) Provide all advertisements, regardless of the medium, which were publicized on behalf of Talk.com to Tennessee persons. This request includes, but is not limited to, all print advertisements and the scripts for all radio and television advertisements.
- c) Provide all documents including scripts and sales presentations used by Talk.com or those acting on its behalf to promote, solicit and verify the use of Talk.com's products by Tennessee persons, including, but not limited to local, intraLATA and/or

- interLATA long distance service, rating and billing. Include the dates during which such documents were used.
- d) Provide an example and/or a sample of each promotional check, gift check, incentive check, prize, gift or award offered by Talk.com to Tennessee persons.
- e) Provide all documents associated with the process by which Tennessee persons were selected to receive promotional checks or to be solicited by telephone

CSD's Response:

The requested information is necessary for the CSD to verify that each of the solicitations involved in this proceeding comply with TRA rules and state law. The CSD is required by law to monitor such activity and enforce the law. See Tenn. Code Ann. § 65-4-125(e). Tenn. Comp. R. & Reg. 122-4-2-.56 (4) states, "Copies of all telemarketing scripts used by telecommunications service providers, or their agents, for the purpose of soliciting end users to change their service (i.e. local, PIC and LPIC) shall be provided to the Authority upon the request of the Consumer Services Division." The CSD is requesting information that it is clearly entitled to obtain and review. As to the request for production of the promotional checks, this agency's rules provide guidelines on the procedures telecommunications carriers must follow when using promotional checks and other financial inducements to market their services. Many of the allegations in the Show Cause Order are associated with such financial inducements. Review of those documents will allow the CSD to ensure that Talk.com's marketing practices comport with TRA rules.

4. Talk.com objects on relevance grounds to the CSD's Request for Production No. 4, which states:

Provide all documents relating to any comparison of the local and additional feature rates of any other local exchange company with those of Talk.com in Tennessee.

CSD's Response:

Some of the telemarketing and third party verification scripts used by Talk.com include a statement that consumers will save 10% of their local telephone bill by switching to Talk.com. The Show Cause Order includes allegations that Talk.com failed to provide the promised 10% discount. The requested information will permit the CSD to compare Talk.com's rates to those of other local exchange companies to evaluate the factual basis for its marketing statements. *See* Tenn. Comp. R. & Reg. 1220-4-2-.58(3)(a) (prohibiting "misleading, deceptive, or unfair marketing acts or practices").

5. Talk.com objects on relevance grounds to the CSD's Request for Production No. 5, which states:

If Talk.com offers any services other than local and long distance telephone service, provide all documents referencing, explaining or promoting such service(s).

CSD's Response:

Tenn. Comp. R. & Reg. 1220-4-2-.58(2)(b) states:

Charges on telephone bills shall have sufficient detail and explanation to allow a subscriber to understand the charge's purpose and origin. Lists of fees such as "service fee," "membership," "miscellaneous," and "calling plan" are deemed insufficient detail and are not permitted. The charge should, at a minimum, describe the service, the date the service was provided to the subscriber, the name of the service provider and a toll free number of the service provider.

Some of the complaints included in the Show Cause Order allege that bills from Talk.com include charges that are confusing or incomprehensible. Some of the complainants provided the CSD with copies of Talk.com bills, which list services and prices. From the information included on the bills, the CSD is unable to identify all of the services allegedly provided. The requested information will enable the CSD to

determine whether Talk.com's bills provide sufficient detail to comply with Tenn. Comp. R. & Reg. 1220-4-2-.58 (2) (b). See Tenn. Code Ann. § 65-4-125(e) (authorizing this agency to enforce the rules against telecommunications services providers).

- 6. Talk.com objects on relevance grounds to the CSD's Request for Production No. 6, which states:
- a) Provide all documents reflecting Talk.com's gross receipts from Tennessee persons and entities including but not limited to Talk.com's Tennessee Franchise and Excise Tax returns for the years in which Talk.com has operated in Tennessee.
- b) Provide a copy of Schedule L and M of Form 1120 of Talk.com's United States Internal Revenue Service tax filings for the years in which Talk.com has operated in Tennessee.

CSD's Response:

Tenn. Code Ann. § 65-4-116 (b) states:

In determining the amount of the penalty, the appropriateness of the penalty to the size of the business of the person, firm or corporation charged, the gravity of the violation and the good faith of the person, firm or corporation charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the penalty, when finally determined, may be deducted from any sums owing by the state to the person, firm or corporation charged or may be recovered in a civil action in the courts of this state.

The requested information will assist the CSD in determining the appropriate penalty to seek against Talk.com.

- 7. With the exception of subpart (c),⁵ Talk.com objects on relevance grounds to the CSD's **Request for Production No. 7**, which states:
- a) Provide all documents relating to the operational procedures and processes utilized by Talk.com to conduct and process its order entry functions, customer cancellation

⁵ Subpart (c) was one of the two discovery requests of the CSD to which Talk.com responded without objection.

service and consumer complaints, including but not limited to internal training manuals.

- b) Provide all complaints, inquiries and/or correspondence from any Tennessee person or entity received by Talk.com, including any documents that Talk.com has maintained documenting complaints by Tennessee persons. Provide a copy of any document containing a response by or on behalf of Talk.com to any such complaint, inquiry or correspondence.
- c) Provide all customer service records for each individual listed in the Order Requiring Talk.com to Appear and Show Cause Why a Cease and Desist Order and/or Fine Should Not Be Imposed issued by the Tennessee Regulatory Authority on November 8, 2001.
- d) Provide all documents indicating, reflecting or referencing any issues related to the mishandling of complaints, inquiries or correspondence relating to Tennessee persons by Talk.com or those acting on its behalf.

CSD's Response:

As to subpart (a), the Show Cause Order includes a number of allegations that consumers repeatedly called Talk.com to cancel their service, but Talk.com did not cancel the service or stop billing them. The requested information is probative of the causes of the alleged delays in the cancellation process and of the operational efficiency of Talk.com's customer service department.

As to subpart (b), Tenn. Comp. R. & Reg. 1220-4-2-.56 (12) states:

Telecommunications service providers are required to maintain a detailed record of all slamming complaints filed against them in Tennessee for two years. A telecommunications service provider shall, upon request by the Authority, file a report with the Authority stating the number of such slamming complaints they have received in Tennessee..."

The requested information (1) will enable CSD to assure that Talk.com is complying with the requirements of Tenn. Comp. R. & Reg. 1220-4-2-.56 (12) and (2) is probative of Talk.com's knowledge of the complaints and the reasonablness of Talk.com's business practices.

As to subpart (d), not all Tennessee Talk.com customers with complaints regarding Talk.com's business practices file complaints with the CSD. The requested information is probative of how Talk.com handles all complaints, rather than those that provide the basis for this proceeding, and goes to the reasonableness of Talk.com's business practices. Further, the requested information may provide additional correspondence with or other documentation related to the complainants in this proceeding.

- 8. Talk.com objects on relevance grounds to the CSD's Request for Production No. 8, which states:
- a) Provide all documents related to any investigations of Talk.com by any state or federal civil or criminal law enforcement entity or agency regarding the activities or practices of Talk.com.
- b) Provide all documents, including but not limited to complaints, pleadings, memoranda, court orders, court opinions, Assurances of Voluntary Compliance or similar documents and consent decrees, filed in any state or federal court or agency to which Talk.com is or was a party.

CSD's Response:

This information is probative of whether the conduct alleged against Talk.com in Tennessee is isolated or is a pattern evident in other states in which Talk.com operates. Such information, if it exists, may be helpful in determining the actions Talk.com should take to address its problems in Tennessee and speaks to the reasonableness of Talk.com's business practices.

- 9. Talk.com objects on relevance grounds to the CSD's Request for Production No. 9, which states:
 - a) Provide all documents used by Talk.com or those acting on its behalf as training materials for employees, agents, contractors, subcontractors, or others who sell the local or long distance service and optional features offered by Talk.com to Tennessee persons.
 - b) Provide all documents provided by Talk.com or those acting on its behalf to employees, agents, contractors, subcontractors, or others who sell or verify the sale of the local or long distance service and optional features offered by Talk.com to Tennessee persons, including but not limited to solicitation and verification scripts. Identify the dates during which such documents were used by Talk.com or those acting on its behalf.

CSD's Response:

The requested information is probative of the company's efforts to train employees and ensure their awareness of applicable state and federal rules and laws regarding telecommunications service providers and the consequences of violating them. Such information relates to the reasonableness of Talk.com's business practices.

B. INTERROGATORIES

1. Talk.com objects on relevance grounds to the CSD's **Interrogatory No. 2,** which states:

Identify any person or entity entering into a contract, agreement, or understanding with Talk.com involving solicitations and verifications made or caused to be made directly or indirectly on behalf of Talk.com to persons in Tennessee.

CSD's Response:

The individuals engaged in solicitations and verifications of new accounts are in the best position to state precisely what, if anything, Talk.com officials told them regarding the manner in which new accounts should be solicited and verified. For example, these individuals can attest to instructions Talk.com representatives may have provided them to induce subscribers to agree to switch their service and whether Talk.com representatives authorized deviations from the written script to induce subscribers to agree to switch their service. Such information is probative of whether Talk.com engaged in a pattern of disregarding the rules regulating solicitations and verifications.

- 2. Talk.com objects on relevance grounds to the CSD's **Interrogatory No. 3**, which states:
 - a) Provide a list of all States in which Talk.com is or has been authorized and/or registered to conduct business or has conducted business, indicating whether Talk.com is actually conducting business in each State at present or whether its authority to conduct business has been denied or revoked.
 - b) Identify all individuals or entities who have served as officers and directors of Talk.com and/or who presently own or have ever owned an interest in Talk.com, the percentage of the interest each owns or owned, and the period of ownership.
 - c) Provide all current and prior business addresses from which Talk.com has operated.

⁶ Talk.com responded without objection to Interrogatory No. 1, which sought the identities of the individuals who participated in drafting the responses to the CSD's discovery requests.

CSD's Response:

The information in subsection (a) and (c) will enable the CSD to investigate whether other states have commenced similar actions against Talk.com and provide a record of Talk.com's compliance in other jurisdictions. Such information is probative of the reasonableness of Talk.com business practices in Tennessee because it demonstrates whether and when Talk.com first had notice of problems related to billing and unauthorized switching. The CSD seeks the identities of Talk.com officers and directors in order to ascertain their knowledge of Talk.com's business practices, including consumer complaints against Talk.com and steps taken to cure such complaints.

The requested information will also enable the CSD to determine the participation, if any, of Talk.com's officers and directors in the activities of other resellers that have been the subject of similar complaints and enforcement actions. Such information is related to the reasonableness of Talk.com's business practices.

- 3. Talk.com objects on relevance grounds to the CSD's **Interrogatory No. 4**, which states:
- a) Identify in an alphabetical listing all persons in Tennessee who were solicited by Talk.com or by persons making or causing to be made solicitations on behalf of Talk.com. Include in your response each person's telephone number and the date and manner in which the person was solicited.
- b) Identify in an alphabetical listing all Tennessee persons who have canceled or discontinued receiving telephone services from you. Include in your response the type of service being cancelled, the date the person first contacted Talk.com or persons acting on its behalf to request cancellation, number of times the person contacted Talk.com before service was cancelled, the date service was actually cancelled, the date of the final bill, the length of time that person received service from Talk.com, the amount of monies collected from that person and the amount of any refund provided to that person related to cancellation and the reason the person gave for canceling Talk.com service.

c) Identify in an alphabetical listing all persons in Tennessee who have registered, filed or expressed complaints to Talk.com or any other State or federal agency that their local, intraLATA and/or interLATA long distance service was switched without authorization as a result of the use of a promotional check. Include the date the promotional check was issued, the date the check was processed and the date the service was switched to Talk.com.

CSD's Response:

The CSD seeks information on the identities of Talk.com's customers and the number of cancellations in Tennessee in order to discover the scope of Talk.com's operations in this state. In light of the large number of consumer complaints against Talk.com received by the CSD, information on the proportion of Talk.com customers in Tennessee filing complaints and the dates the complaints were filed is probative of the reasonableness of Talk.com's business practices, a key issue in this litigation and relates to the appropriate penalty. *See* Tenn. Code Ann. § 65-4-116.(b). Information related to Talk.com's handling of cancellations and consumer complaints is also probative of the issue of the reasonableness of Talk.com's business practices. Information on the complaints related to promotional checks is probative of the error rate associated with this form of solicitation. An inflated error rate may indicate that Talk.com failed to implement sufficient controls to prevent unauthorized switches.

- 4. Talk.com objects on relevance grounds to the CSD's **Interrogatory No. 5**, which states:
 - a) Identify any person, entity or agency responsible for drafting, designing and placing advertisements, including but not limited to promotional checks and the addresses and telephone numbers thereon, on behalf of Talk.com. Specify the specific responsibility of each.
 - b) Provide a list of all conditions, restrictions, or limitations associated with each promotional check, gift check, incentive check, prize, gift or award offered by Talk.com to Tennessee persons.

- c) Identify all persons, companies, corporations and entities that are acting or have acted on behalf of Talk.com to ensure that the use of promotional checks did not result in the unauthorized transfer of the telecommunications service of persons in Tennessee, specifying the means and methods Talk.com adopted and utilized to ensure that the Tennessee consumers whose names appeared on Talk.com's promotional checks resided at the addresses appearing on those same promotional checks.
- d) Identify all Tennessee persons who received promotional checks issued by or on behalf of Talk.com. Include the dates the checks were mailed, the dates the checks were cashed and the dates service was switched to Talk.com.

CSD's Response:

Knowledge of the identities of the individuals who created the scripts and other such material will assist the CSD in assuring that it has obtained all of the material it is entitled to review and verified Talk.com's compliance with Tennessee law and regulations. Further, these individuals may possess information on the manner in which Talk.com sought to implement the promotional check program and the extent to which Talk.com attempted to prevent unauthorized switching.

In the counts involving promotional checks included in the Show Cause Order, each of the promotional checks contains numerous violations of Tenn. Comp. R. & Reg. 1220-4-2-.56. The CSD is required to investigate whether additional promotional checks distributed by or on behalf of Talk.com violate the regulations as well. *See* Tenn. Code Ann. §§ 65-4-117(a) and 65-4-125(e). Knowledge of the identities of the individuals who received the promotional checks will assist the CSD in determining whether all the promotional checks used in Tennessee failed to comply with the applicable regulations. Such information is probative of the reasonableness of Talk.com's business practices.

5. Talk.com objects on relevance grounds to the CSD's **Interrogatory No. 6**, which states:

Provide a schedule of the prices charged to Tennessee consumers on all local and toll rate plans and all other service features including but not limited to directory assistance, call waiting, three-way calling and voicemail. Provide the schedule on both a stand-alone and bundled offering basis. In the various toll rate plans, provide the price per minute charged for interstate and intrastate calls.

CSD's Response:

A number of Talk.com's telemarketing and third party verification scripts assert that consumers will save ten percent (10%) of their local telephone bill by switching to Talk.com. Pursuant to Tenn. Comp. R. & Reg. 1220-4-2-.58(3)(a), which prohibits "misleading, deceptive, or unfair marketing acts or practices," the CSD seeks this information in order to compare Talk.com's rates with those of other local exchange companies to determine the basis for Talk.com's assertion. *See* Tenn. Code Ann. § 65-4-117(a) ("The Authority has the power to investigate, upon its own initiative or upon complaint in writing, any matter concerning any public utility as defined in §65-4-101.").

Several of the complaints in the Show Cause Order contain allegations that reveal a variety of charges for what appear to be the same services. The requested information is probative of whether Talk.com improperly billed for services in violation of Tenn. Code Ann. § 65-4-125(b).

- 6. Talk.com objects on relevance grounds to the CSD's **Interrogatory No. 7**, which states:
 - a) Provide a list of all area codes and their concomitant states throughout the United States from which Talk.com has received complaints from persons alleging that Talk.com switched their local, intraLATA and/or interLATA long distance service without authorization.
 - b) Identify all persons in Tennessee who registered, filed or otherwise expressed complaints against Talk.com to Talk.com or any other entity which allege that the customers were erroneously connected to the wrong calling plan.

- c) Describe the system used to record, track and respond to customer cancellation of service requests from persons in Tennessee. Identify all persons, companies, corporations and entities involved in this system, including their names, addresses and telephone numbers.
- d) Identify all those persons, employees, entities and others who have acted or are acting for or on behalf of Talk.com to address customer service questions, including but not limited to complaints and cancellation of service requests made by persons in Tennessee. Include the dates of service of each.
- e) Identify the persons in Tennessee whose Talk.com accounts are being or have been referred to professional collection agencies.

CSD's Response:

The questions in Interrogatory No. 7 are probative of the reasonableness of Talk.com's business practices, a pivotal issue in this litigation. See Tenn. Code Ann. § 65-4-125. Evidence that Talk.com has received complaints similar to those included in the Show Cause Order from consumers in other states shows notice of the alleged problems and whether Talk.com's alleged pattern of conduct is isolated to Tennessee or is more pervasive. Evidence of the identities of Tennesseans who registered, filed or otherwise expressed complaints against Talk.com may be used to determine an error rate showing a pattern of violations, which may be relevant in determining the appropriate penalty in this proceeding. This information will also assist the CSD in ascertaining the reasonableness of Talk.com's business policies and its implementation thereof with regard to customer complaints, which are matters at issue in this proceeding. See Tenn. Code Ann. §§ 65-4-125 (a) and (b).

Evidence of the identities of Talk.com's customer service personnel will also assist the CSD in determining the process by which consumers were placed on Talk.com's internal Do-Not-Call list. Some of the complaints included in the Show Cause Order allege that Talk.com solicited them more than once after the consumer

requested that soliciting cease. Talk.com's responses to these complaint state that the consumers were placed on Talk.com's internal Do-Not-Call list. Evidence of the persons in Tennessee whose Talk.com accounts are being or have been referred to professional collection agencies will assist the CSD in investigating allegations that Talk.com refused to "release" lines until disputed bills were paid in full.

7. Talk.com objects on relevance grounds to the CSD's **Interrogatory No. 8**, which states:

Identify the name, residential address, telephone number, social security number and job description or title of all employees (past and present) of Talk.com. You may limit your response to employees that would have contact with Tennessee persons.

CSD's Response:

Employees, especially former employees, may provide information on the operation of the company and the instructions and training it provided regarding ordering, customer service, cancellations and billing. The requested information will assist the agency in determining the steps Talk.com has taken to train employees and ensure that they are aware of applicable state and federal rules and laws regarding telecommunications service providers and the consequences of violating them.

CONCLUSION

In summary, the CSD respectfully requested the Pre-Hearing Officer to grant its Motion to Compel and to require Talk.com to pay the expenses incurred in preparing this Motion.

Respectfully submitted,

Lynn Questell

Counsel

Randall Gilliam

Counsel

Tennessee Regulatory Authority 460 James Robertson Parkway Nashville, Tennessee 37243-0505 (615) 741-2904 (ext. 198)

CERTIFICATE OF SERVICE

> Henry Walker Boult, Cummings, Conners & Berry PLC 414 Union Street, Suite 1600 Nashville, TN 37219-8062

Tim Phillips
Shilina B. Chatterjee
Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, TN 37202

Lynn Questell

BEFORE THE TENNESSEE REGULATORY AUTHORITY NASHVILLE, TENNESSEE

IN RE: SHOW CAUSE PROCEEDING AGAINST TALK.COM, INC.)	
	j	DOCKET NO. 01-00216
)	
)	
)	

TALK.COM'S RESPONSE TO CONSUMER SERVICES DIVISIONS' REQUEST FOR PRODUCTION OF DOCUMENTS AND INTERROGATORIES

Respondent Talk.com Holding Corp., d/b/a/ Talk.com, ("Talk.com" or the "Company")¹ by its attorneys, pursuant to the Hearing Officer's Order Establishing Procedural Schedule in Docket No. 01-00216², issued January 3, 2002, hereby submits its response to the Consumer Services Division ("CSD") of the Tennessee Regulatory Authority ("TRA") Request for Production of Documents and Interrogatories submitted on January 7, 2002. For Each response, the Company will provide the Discovery request number, the request for discovery submitted by the TRA and the Company's response.

ATTACHMENT

On April 9, 2001, Talk.com Holding Corp. changed its name to Talk America Inc. On May 7, 2001, Talk.com filed a request for name change to the TRA. On May 12, 2001, the Directors voted to defer a ruling on Talk.com's request to change its name. Outside of Tennessee, Talk.com does business under the name "Talk America" in all states except Indiana (for local service, however, Talk.com is only providing long distance within the state and is doing so as Talk America) and Texas (both local and long distance) where the name change request is pending final approval. To date, Tennessee is the only state that has not taken any action regarding the request for name change.

Docket No. 01-00216 refers to the "Order Requiring Talk.com to Appear and Show Cause Why a Cease and Desist Order and/or Fine Should not be Imposed" ("Show Cause Order") issued on November 8, 2001 by the Tennessee Regulatory Authority.

DEFINITIONS AND INSTRUCTIONS

(a) For purposes of the Requests, the meaning of "Documentary Materials," "Documentation" and "Documents" shall include, but is not limited to:

All written material, however produced or reproduced and wherever located, that is owned, possessed, controlled, in the custody of or accessible to your company, constructively or otherwise, and whether prepared or received by your company; and shall include, but is not limited to, letters, correspondence certificates, newspapers, logs, journals, accounts, schedules, contracts, prospectuses, marketing and advertising materials, agreements, drafts, reports, memoranda (including memoranda or notes of telephone conversations, other conversations, discussions, meetings, or conferences), telegrams, telexes, photographs, books, transcripts, records, pamphlets, office communications (inter-office and intra-office), bulletins, manuals, minutes, marketing studies, statements, notebooks, forms, notices, tabulations, analyses, studies, microfilms, voice recordings, videotapes, tables or statistical or other data, computer stored data (e-mail, etc.), notes or other tangible things, including copies if the copy bears any other marking or notation of any kind and each such document shall include all attachments, enclosures, and materials underlying, supporting or used in the preparation of any such document, and other documents that relate or refer to each such document.

(b) Also, for the purposes of this Request, the term "you" shall mean and include:

Talk.com and/or any and all officers, owners, employees, agents and representatives of Talk.com.

- (c) "Identify" shall mean the following when referring to:
 - a natural person, means to state his/her full name and present or last known address, telephone number, date of birth and his/her present or last known business position and affiliation;
 - 2) A corporation, partnership or other business entity, means to state the full name and last known address of the entity;
 - 3) A document means to state its date, its-author, its recipient and his/her address and the names of each of its present custodians; and
 - 4) When used in connection to a factual situation or allegation means to state with particularity and specificity all facts known which bear upon or are related to the matter which is the subject of the inquiry, using the simplest and most factual statement of which you are capable.
- (d) "Person" means any natural person, or any corporation, partnership, or association of persons.

- (e) Complaint" means any expression, written or oral, conveying dissatisfaction. to any entity.
- (f) Unless otherwise indicated, documents to be produced pursuant to this Request include each and every document prepared, sent, dated, received, in effect, or which otherwise came into existence during the period from January 1, 1997 to the date of the production of the documents.
- (g) Document requests in the Request call for the production of each and every responsive document in Talk.com's possession, custody, and control without regard to the physical location of those documents.
- (h) If Talk.com asserts a privilege in response to a document request in this Request, Talk.com must state the privilege, basis for the privilege, and identify the documents to which the privilege attaches.
- (i) All documents shall be provided along with affidavits from each of the persons responsible for completing the response. The affidavits must state that the documents represent a complete, truthful and accurate response to this Request. The affidavits must also authenticate all documents provided in response to the Request.
- (j) Whenever appropriate, the singular form of a word should be interpreted in the plural, and the plural form should be interpreted in the singular.
- (k) In responding to this Request, preface each answer or document by the Request number to which it is addressed. If you are unable to answer a Request fully, submit as much information as is available, explain why your answer is incomplete, and state the source or sources from which a complete answer may be obtained. If an accurate answer cannot be obtained, from books or records, your best estimate, so identified, should be submitted indicating the source of the estimate.
- (l) These discovery requests are intended to be continuing requests, requiring you to supplement your production or answers with documents or answers within the scope of the requests that may be acquired by you, your agents, your attorneys or your representatives at any time following the date of your original response.

GENERAL OBJECTIONS

Talk.com hereby makes the following General Objections to each and every one of CSD's Interrogatories and Requests for Production:

Talk.com objects to CSD's Interrogatories and Requests for Production of Documents to the extent that they seek: (1) information or materials protected by privileges protecting attorney-client communications and/or attorney work-product doctrine; (2) material or information prepared in anticipation of litigation; or (3) any information or materials subject to other privileges. Any inadvertent production of any such information or documents shall not constitute a waiver of any applicable privilege for such information or document or for any similar information.

RESPONSE TO REQUEST PRODUCTION OF DOCUMENTS

Request For Production No. 1: Corporate Information.

Provide all documents reflecting the corporate structure and corporate formation as well as any reorganization or restructuring of Talk.com and any holdings or interest Talk.com has in other entities.

Response of Talk.com

Talk.com objects to objects to this Request on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the Request is not reasonably connected to a specific violation(s) contained in the Show Cause Order. Talk.com respectfully requests that the CSD rephrase this Request in reference to specific count(s) contained in the Show Cause Order.

Request for Production No. 2: Relationships With Companies and Providers.

Provide all documents, including but not limited to contracts, relating to or describing the relationship between Talk.com and (1) BellSouth; (2)any other local exchange carrier in Tennessee; and/or (3)any person or company involved in the provision of loca' or long distance service and /or rating and billing services and/or solicitations to Tennessee persons on behalf of Talk.com.

Response of Talk.com

Talk.com objects to objects to this Request on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the Request is not reasonably connected to a specific violation(s) contained in the Show Cause Order. Talk.com respectfully requests that the CSD rephrase this Request in reference to specific count(s) contained in the Show Cause Order.

Request for Production No. 3: Advertisements and Other Promotional Information.

a) Provide all documents that explain detail, advertise, promote and/or offer Talk.com's local, intraLATA and/or interLATA long distance service, billing and rating to Tennessee persons.

Response of Talk.com

Talk.com objects to objects to this Request on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the Request is not reasonably connected to a specific violation(s) contained in the Show Cause Order. Talk.com respectfully requests that the CSD rephrase this Request in reference to specific count(s) contained in the Show Cause Order.

b) Provide all advertisements, regardless of the medium, which were publicized on behalf of Talk.com to Tennessee persons. This request includes, but is not limited to, all print advertisements and the scripts for all radio and television advertisements.

Response of Talk.com

Talk.com objects to objects to this Request on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the Request is not reasonably connected to a specific violation(s) contained in the Show Cause Order. Talk.com respectfully requests that the CSD rephrase this Request in reference to specific count(s) contained in the Show Cause Order.

c) Provide all documents including scripts and sales presentations used by Talk.com or those acting on its behalf to promote, solicit and verify the use of Talk.com's products by Tennessee persons, including, but not limited to local, intraLATA and/or interLATA long distance service, rating and billing. Include the dates during which such documents were used.

Response of Talk.com

Talk.com objects to objects to this Request on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the Request is not reasonably connected to a specific violation(s) contained in the Show

Cause Order. Talk.com respectfully requests that the CSD rephrase this Request in reference to specific count(s) contained in the Show Cause Order.

d) Provide an example and/or a sample of each promotional check, gift check, incentive check, prize, gift or award offered by Talk.com to Tennessee persons.

Response of Talk.com

Talk.com objects to objects to this Request on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the Request is not reasonably connected to a specific violation(s) contained in the Show Cause Order. Talk.com respectfully requests that the CSD rephrase this Request in reference to specific count(s) contained in the Show Cause Order.

e) Provide all documents associated with the process by which Tennessee persons were selected to receive promotional checks or to be solicited by telephone.

Response of Talk.com

Talk.com objects to objects to this Request on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the Request is not reasonably connected to a specific violation(s) contained in the Show Cause Order. Talk.com respectfully requests that the CSD rephrase this Request in reference to specific count(s) contained in the Show Cause Order.

Request for Production No. 4: Rates.

Provide all documents relating to any comparison of the local and additional feature rates of any other local exchange company with those of Talk.com in Tennessee.

Response of Talk.com

Talk.com objects to objects to this Request on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the Request is not reasonably connected to a specific violation(s) contained in the Show Cause Order. Talk.com respectfully requests that the CSD rephrase this Request in reference to specific count(s) contained in the Show Cause Order.

Request for Production No. 5: Types of Services Offered.

If Talk.com offers any services other than local and long distance telephone service, provide all documents referencing, explaining or promoting such service(s),

Response of Talk.com

Talk.com objects to objects to this Request on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the Request is not reasonably connected to a specific violation(s) contained in the Show Cause Order. Talk.com respectfully requests that the CSD rephrase this Request in reference to specific count(s) contained in the Show Cause Order.

Request for Production No. 6: Financial Information.

a) Provide all documents reflecting Talk.com's gross receipts from Tennessee persons and entities including but not limited to Talk.com's Tennessee Franchise and 'Excise Tax returns for the years in which Talk.com has operated in Tennessee.

Response of Talk.com

Talk.com objects to objects to this Request on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the Request is not reasonably connected to a specific violation(s) contained in the Show Cause Order. Talk.com respectfully requests that the CSD rephrase this Request in reference to specific count(s) contained in the Show Cause Order.

b) Provide a copy of Schedule L and M of Form 1120 of Talk.com's United States Internal Revenue Service tax filings for the years in which Talk.com has operated in Tennessee.

Response of Talk.com

Talk.com objects to objects to this Request on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the Request is not reasonably connected to a specific violation(s) contained in the Show Cause Order. Talk.com respectfully requests that the CSD rephrase this Request in reference to specific count(s) contained in the Show Cause Order.

Request for Production No. 7: Handling of Consumer Complaints and Inquiries.

a) Provide all documents relating to the operational procedures and processes utilized by Talk.com to conduct and process its order entry functions, customer cancellation service and consumer complaints, including but not limited to internal training manuals.

Response of Talk.com

Talk.com objects to objects to this Request on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the Request is not reasonably connected to a specific violation(s) contained in the Show

Cause Order. Talk.com respectfully requests that the CSD rephrase this Request in reference to specific count(s) contained in the Show Cause Order.

b) Provide all: complaints, inquiries and/or correspondence from any Tennessee person or entity received by Talk.com, including any documents that Talk-corn has maintained documenting complaints by Tennessee persons. Provide a copy of any document containing a response by or on behalf of Talk.com to any such complaint, inquiry or correspondence.

Response of Talk.com

Talk.com objects to objects to this Request on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the Request is not reasonably connected to a specific violation(s) contained in the Show Cause Order. Talk.com respectfully requests that the CSD rephrase this Request in reference to specific count(s) contained in the Show Cause Order.

c) Provide all customer service records for each individual listed in the Order Requiring Talk.com to Appear and Show Cause Why A Cease and Desist Order and/or Fine Should Not Be Imposed issued by the Tennessee Regulatory Authority on November 8, 2001.

Response of Talk.com

Please see *Exhibit A*, attached hereto, which contains a copy of the customer service records of the complainant in paragraph one (1) through and including paragraph sixty-three (63) of the Show Cause Order. Please note that the Company does not have customer service records for complainants alleging violations of the Tennessee "Do Not Call" Register in paragraph sixty-four (64) through paragraph one hundred seven (107) of the Show Cause Order. However, it is the Company's understanding that CSD is independently obtaining this information directly from BellSouth. See Response of the Consumer Services Division to Talk.com's Brief in Support of Request to Take Depositions of Complaining Witnesses at 3 (filed January 16, 2002).

The numbered tabs and the following consumer service records correspond with the numbered exhibit tabs provided with the Show Cause Order. For example, tab one (1) to the Show Cause Order contains the CSD's supporting information for complainant John Smith, tab one (1) of Exhibit A contains the customer service records for John Smith.

d) Provide all documents indicating, reflecting or referencing any issues related to the mishandling of complaints, inquiries or correspondence relating to Tennessee persons by Talk.com or those acting on its behalf.

Response of Talk.com

Talk.com objects to objects to this Request on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not

reasonably calculated to lead to the discovery of admissible evidence. Specifically, the Request is not reasonably connected to a specific violation(s) contained in the Show Cause Order. Talk.com respectfully requests that the CSD rephrase this Request in reference to specific count(s) contained in the Show Cause Order.

Request for Production No. 8: Other Governmental Investigations or Pending Litigation.

a) Provide all documents related to any investigations of Talk.com by any state or federal civil or criminal law enforcement entity or agency regarding the activities or practices of Talk.com.

Response of Talk.com

Talk.com objects to objects to this Request on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the Request is not reasonably connected to a specific violation(s) contained in the Show Cause Order. Talk.com respectfully requests that the CSD rephrase this Request in reference to specific count(s) contained in the Show Cause Order.

b) Provide all documents, including but not limited to complaints, pleadings, memoranda, court orders, court opinions, Assurances of Voluntary Compliance or similar documents and consent decrees, filed in any state or federal court or agency to which Talk.com is or was a party.

Response of Talk.com

Talk.com objects to objects to this Request on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the Request is not reasonably connected to a specific violation(s) contained in the Show Cause Order. Talk.com respectfully requests that the CSD rephrase this Request in reference to specific count(s) contained in the Show Cause Order.

Request for Production 9: Employees and Training Materials.

a) Provide all documents used by Talk.com or those acting on its behalf as training materials for employees, agents, contractors, subcontractors, or others who sell the local or long distance service and optional features offered by Talk.com to Tennessee persons.

Response of Talk.com

Talk.com objects to objects to this Request on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the Request is not reasonably connected to a specific violation(s) contained in the Show

Cause Order. Talk.com respectfully requests that the CSD rephrase this Request in reference to specific count(s) contained in the Show Cause Order.

b) Provide all documents provided by Talk.com or those acting on its behalf to employees, agents, contractors, subcontractors, or others who sell or verify the sale of the local or long distance service and optional features offered by Talk.com to Tennessee persons, including but not limited to solicitation and verification scripts. Identify the dates during which such documents were used by Talk.com or those acting on its behalf.

Response of Talk.com

Talk.com objects to objects to this Request on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the Request is not reasonably connected to a specific violation(s) contained in the Show Cause Order. Talk.com respectfully requests that the CSD rephrase this Request in reference to specific count(s) contained in the Show Cause Order.

INTERROGATORIES

Interrogatory No. 1: Persons responding to this Request.

Identify each and every person who participated or assisted in the drafting of your responses to this Request.

Response of Talk.com

Steven A. Augustino and Erin W. Emmott, Kelley Drye & Warren, LLP, and Henry Walker, Boult, Cummings, Conners & Berry, PLC, counsel for Talk.com prepared the answers to these Discovery Requests. Francie McComb, Associate General Counsel, Talk America Inc. and Carol Bonello, Corporate Paralegal, Talk America Inc. supplied information used in connection with the preparation of these answers.

Interrogatory No. 2: Contract Information.

Identify any person or entity entering into a contract, agreement, or understanding with Talk.com involving solicitations and verifications made or caused to be made directly or indirectly on behalf of Talk.com to persons in Tennessee.

Response of Talk.com

Talk.com objects to objects to this Interrogatory on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the Interrogatory is not reasonably connected to a specific violation(s) contained in the Show

Cause Order. Talk.com respectfully requests that the CSD rephrase this Interrogatory in reference to specific count(s) contained in the Show Cause Order.

Interrogatory No. 3: Corporate Information.

a) Provide a list of all States in which Talk-corn is or has been authorized and/or registered to conduct business or has conducted business, indicating whether Talk.com is actually conducting business in each State at present or whether its authority to conduct business has been denied or revoked.

Response of Talk.com

Talk.com objects to objects to this Interrogatory on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the Interrogatory is not reasonably connected to a specific violation(s) contained in the Show Cause Order. Talk.com respectfully requests that the CSD rephrase this Interrogatory in reference to specific count(s) contained in the Show Cause Order.

b) Identify all individuals or entities who have served as officers and directors of Talk.com and/or who presently own or have ever owned an interest in Talk.com, the percentage of the interest each owns or owned, and the period of ownership.

Response of Talk.com

Talk.com objects to objects to this Interrogatory on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the Interrogatory is not reasonably connected to a specific violation(s) contained in the Show Cause Order. Talk.com respectfully requests that the CSD rephrase this Interrogatory in reference to specific count(s) contained in the Show Cause Order.

c) Provide all current and prior business addresses from which Talk.com has operated.

Response of Talk.com

Talk.com objects to objects to this Interrogatory on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the Interrogatory is not reasonably connected to a specific violation(s) contained in the Show Cause Order. Talk.com respectfully requests that the CSD rephrase this Interrogatory in reference to specific count(s) contained in the Show Cause Order.

Interrogatory No. 4: Consumer Information.

a) Identify in an alphabetical listing all persons in Tennessee who were solicited by Talk.com or by persons making or causing to be made solicitations on behalf of

Talk.com. Include in your response each person's telephone number and the date and manner in which the person was solicited.

Response of Talk.com

Talk.com objects to objects to this Interrogatory on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the Interrogatory is not reasonably connected to a specific violation(s) contained in the Show Cause Order. Talk.com respectfully requests that the CSD rephrase this Interrogatory in reference to specific count(s) contained in the Show Cause Order.

b) Identify in an alphabetical listing all Tennessee persons who have canceled or discontinued receiving telephone services from you. Include in your response the type of service being cancelled, the date the person first contacted Talk-corn or persons acting on its behalf to request cancellation, number of times the person contacted Talk-com before service was cancelled, the date service was actually cancelled, the date of the final bill, the length of time that person received service from Talk-com, the amount of monies collected from that person and the amount of any refund provided to that person related to cancellation and the reason the person gave for canceling Talk-corn service.

Response of Talk.com

Talk.com objects to objects to this Interrogatory on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the Interrogatory is not reasonably connected to a specific violation(s) contained in the Show Cause Order. Talk.com respectfully requests that the CSD rephrase this Interrogatory in reference to specific count(s) contained in the Show Cause Order.

c) Identify in an alphabetical listing all persons in Tennessee who have registered, filed or expressed complaints to Talk.com or any other State or federal agency that their local, intraLATA and/or interLATA long distance service was switched without authorization as a result of the use of a promotional check. Include the date the promotional check was issued, the date the check was processed and the date the service was switched to Talk.com.

Response of Talk.com

Talk.com objects to objects to this Interrogatory on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the Interrogatory is not reasonably connected to a specific violation(s) contained in the Show Cause Order. Talk.com respectfully requests that the CSD rephrase this Interrogatory in reference to specific count(s) contained in the Show Cause Order.

Interrogatory No. 5: Advertising and Other Promotional Activities.

a) Identify any person, entity or agency responsible for drafting, designing and placing advertisements, including but not limited to promotional checks and the addresses and telephone numbers thereon, on behalf of Talk.com. Specify the specific responsibility of each.

Response of Talk.com

Talk.com objects to objects to this Interrogatory on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the Interrogatory is not reasonably connected to a specific violation(s) contained in the Show Cause Order. Talk.com respectfully requests that the CSD rephrase this Interrogatory in reference to specific count(s) contained in the Show Cause Order.

b) Provide a list of all conditions, restrictions, or limitations associated with each promotional check, gift check, incentive check, prize, gift or award offered by Talk.com to Tennessee persons.

Response of Talk.com

Talk.com objects to objects to this Interrogatory on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the Interrogatory is not reasonably connected to a specific violation(s) contained in the Show Cause Order. Talk.com respectfully requests that the CSD rephrase this Interrogatory in reference to specific count(s) contained in the Show Cause Order.

c) Identify all persons, companies, corporations and entities that are acting or have acted on behalf of Talk.com to ensure that the use of promotional checks did not result in the unauthorized transfer of the telecommunications service of persons in Tennessee, specifying the means and methods Talk.com adopted and utilized to ensure that the Tennessee consumers whose names appeared on Talk.com's promotional checks resided at the addresses appearing on those same promotional checks.

Response of Talk.com

Talk.com objects to objects to this Interrogatory on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the Interrogatory is not reasonably connected to a specific violation(s) contained in the Show Cause Order. Talk.com respectfully requests that the CSD rephrase this Interrogatory in reference to specific count(s) contained in the Show Cause Order.

d) Identify all Tennessee persons who received promotional checks issued by or on behalf of Talk.com. Include the dates the checks were mailed, the dates the checks were cashed and the dates service was switched to Talk.com.

Response of Talk.com

Talk.com objects to objects to this Interrogatory on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the Interrogatory is not reasonably connected to a specific violation(s) contained in the Show Cause Order. Talk.com respectfully requests that the CSD rephrase this Interrogatory in reference to specific count(s) contained in the Show Cause Order.

Interrogatory No. 6: Rates.

Provide a schedule of the prices charged to Tennessee consumers on all local and toll rate plans and all other service features including but not limited to directory assistance, call waiting, three-way calling and voicemail. Provide the schedule on both a stand-alone and bundled offering basis. In the various toll rate plans, provide the price per minute charged for interstate and intrastate calls.

Response of Talk.com

Talk.com objects to objects to this Interrogatory on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the Interrogatory is not reasonably connected to a specific violation(s) contained in the Show Cause Order. Talk.com respectfully requests that the CSD rephrase this Interrogatory in reference to specific count(s) contained in the Show Cause Order.

Interrogatory No. 7: Consumer complaint and inquiry handling.

a) Provide a list of all area codes and their concomitant states throughout the United States from which Talk-corn has received complaints from persons alleging that Talk.com switched their local, intraLATA and/or interLATA long distance service without authorization.

Response of Talk.com

Talk.com objects to objects to this Interrogatory on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the Interrogatory is not reasonably connected to a specific violation(s) contained in the Show Cause Order. Talk.com respectfully requests that the CSD rephrase this Interrogatory in reference to specific count(s) contained in the Show Cause Order.

b) Identify all persons in Tennessee who registered, filed or otherwise expressed complaints against Talk.com to Talk.com or any other entity which allege that the customers were erroneously connected to the wrong calling plan.

Response of Talk.com

Talk.com objects to objects to this Interrogatory on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the Interrogatory is not reasonably connected to a specific violation(s) contained in the Show Cause Order. Talk.com respectfully requests that the CSD rephrase this Interrogatory in reference to specific count(s) contained in the Show Cause Order.

c) Describe the system used to record, track and respond to customer cancellation of service requests from persons in Tennessee. Identify all persons, companies, corporations and entities involved in this system, including their names, addresses and telephone numbers.

Response of Talk.com

Talk.com objects to objects to this Interrogatory on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the Interrogatory is not reasonably connected to a specific violation(s) contained in the Show Cause Order. Talk.com respectfully requests that the CSD rephrase this Interrogatory in reference to specific count(s) contained in the Show Cause Order.

d) Identify all those persons, employees, entities and others who have acted or are acting for or on behalf of Talk-corn to address customer service questions, including but not limited to complaints and cancellation of service requests made by persons in Tennessee. Include the dates of service of each.

Response of Talk.com

Talk.com objects to objects to this Interrogatory on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the Interrogatory is not reasonably connected to a specific violation(s) contained in the Show Cause Order. Talk.com respectfully requests that the CSD rephrase this Interrogatory in reference to specific count(s) contained in the Show Cause Order.

e) Identify the persons in Tennessee whose Talk.com accounts are being or have been referred to professional collection agencies.

Response of Talk.com

Talk.com objects to objects to this Interrogatory on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the Interrogatory is not reasonably connected to a specific violation(s) contained in the Show

Cause Order. Talk.com respectfully requests that the CSD rephrase this Interrogatory in reference to specific count(s) contained in the Show Cause Order.

Interrogatory No. 8: Employees and training material.

Identify the name, residential address, telephone number, social security number and job description or title of all employees (past and present) of Talk.com. You may limit your response to employees that would have contact with Tennessee persons.

Response of Talk.com

Talk.com objects to objects to this Interrogatory on the grounds that it seeks to elicit information that is irrelevant to the issues raised in this proceeding and which is not reasonably calculated to lead to the discovery of admissible evidence. Specifically, the Interrogatory is not reasonably connected to a specific violation(s) contained in the Show Cause Order. Talk.com respectfully requests that the CSD rephrase this Interrogatory in reference to specific count(s) contained in the Show Cause Order.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

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Dated: January 22, 2002

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been delivered via fax or hand delivery and U.S. mail to the following on this the ______ day of January, 2002.

Cynthia E. Kinser, Esq.
Timothy C. Phillips, Esq.
Deputy Attorney General
Consumer Advocate & Protection Division
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